

GOOGLE INC.

## BETA EVALUATION AGREEMENT

### Google Search Appliance™ Pre-release Version 4.2 and 4.4

This Beta Evaluation Agreement for the Google Search Appliance™ Pre-release Version 4.2 and 4.4 (the "**Agreement**") is entered into this \_\_\_\_ day of \_\_\_\_ October \_\_\_\_, 2004, by and between Google Inc., 1600 Amphitheatre Parkway, Mountain View, California 94043 ("**Google**") and \_\_\_\_\_, a \_\_\_\_\_ corporation with offices at \_\_\_\_\_ ("**Evaluator**" or "**You**"). By accepting this Agreement You enroll in the Google beta program for the Google Search Appliance Pre-release Version 4.2 and 4.4 (the "**Beta Program**").

1. **LICENSE.** Subject to the terms and conditions of this Agreement, Google grants to Evaluator a non-transferable, non-exclusive, limited license to use for the Evaluation Period as defined herein (i) certain proprietary computer programs in binary executable form only, known as the Google Search Appliance Software (the "**Software**"), and the proprietary computer hardware in which the Software is installed (the "**Hardware**") and (ii) certain proprietary computer software documentation (the "**Documentation**"). The Software and Hardware are collectively referred to herein as the "**Appliance**". The Appliance and Documentation are collectively referred to herein as the "**Product**", which definition expressly excludes any search results produced by the Appliance. The license granted herein shall be limited to solely testing the Appliance internally in a non-production environment for the sole purpose of providing Google with feedback on the Product's usability and functionality. Such evaluation may be conducted by installing and operating the Appliance solely to create an index of and search for content located on a server, or servers, which is or are owned by Evaluator or operated on its behalf. Such searching capability and results made available by the Product on such authorized server or server(s) are hereby licensed to Your authorized end-users. This license specifically excludes the use of the Software to index content on any server or servers which is not or are not owned by Evaluator or operated on its behalf. This license is further limited to using the Appliance to index no more than \_\_\_\_\_ documents. A license key that enables the Software may be forwarded to You electronically.

2. **TERM; RETURNS.** The term of the license granted herein shall be for a **sixty (60) day** period (the "**Evaluation Period**"), commencing on the date of shipment of the Appliance, unless terminated for breach or as otherwise set forth herein. Google may extend the Evaluation Period in its sole discretion and will notify You in writing in such event. Upon termination or expiration of the Evaluation Period, You will cooperate with Google in the timely return of the Appliance. In the event the Appliance is not returned to Google within thirty (30) days of expiration of the Evaluation Period, Google may invoice You Google's then current fee for the Appliance and You shall remit payment within thirty (30) days of the date thereof. Evaluator may terminate this Agreement and the license hereunder at any time. Upon request, Google will remove Evaluator and Google data from the Appliance and provide Evaluator access to confirm its data has been removed. Google may terminate the Agreement prior to expiration of the Evaluation Period upon reasonable prior notice if Google determines in its sole discretion that it is impractical to continuing offering the Beta Program in light of the feedback received concerning the Appliance. Further, Google may terminate this Agreement and all licenses herein (i) immediately upon written notice if Evaluator breaches Section 4 (Confidential Information) or Section 5 (Ownership; Restricted Use); or (ii) upon ten (10) days' written notice if Evaluator fails to cure any other breach of this Agreement within such ten-day period. Google is providing the Appliance during the Evaluation Period free of charge.

If this license and Agreement are terminated for breach, or if Evaluator determines that it does not wish to purchase the Hardware and license the Software, Evaluator shall return the Product and any other Google Confidential Information, as defined herein, to Google via Google's authorized return shipment process for receipt within ten (10) business days of termination or the expiration of the Evaluation Period, unless otherwise agreed by Google in writing. In the event the Appliance is returned to Google, Google will delete any logs containing data obtained from Evaluator during the Evaluation Period.

3. **TECHNICAL SUPPORT SERVICES/FEEDBACK.** Google shall provide beta technical support services ("**BTSS**") to Evaluator during the Evaluation Period. BTSS may include (as determined by Google in its sole discretion) software updates made available to beta Evaluator during the Evaluation Period. Defective Hardware will be replaced by Google at its sole discretion. Evaluator is expected to test and provide feedback on these updates in a timely manner. Any copy of an update made to a physical medium to facilitate the installation of the update onto the Appliance must be erased or destroyed once installed on the Appliance. Remote high bandwidth access, sufficient for downloading upgrade images, to the Appliance must be permitted by Evaluator, unless separate arrangements are agreed with Google. Evaluator will use new beta features in the Appliance in a timely manner and will provide detailed feedback and notification of any found defects in the software to [appliance-beta@google.com](mailto:appliance-beta@google.com). If Evaluator does not provide reasonable and timely feedback on the operation of the Appliance, Google reserves the right to terminate this Agreement immediately upon written notice to Evaluator and require the return of the Product to Google.

4. **CONFIDENTIAL INFORMATION.** You agree not to discuss the details or status of the Beta Program, or any features delivered as part of such program, with any third party. The Appliance, the Beta Program (including all features, schedule and results) and this Agreement are confidential and proprietary information of Google and/or its licensors.

("Confidential Information"). Neither party shall disclose or cause to be disclosed any Confidential Information of the other party, except to those employees, representatives, or contractors of the parties who require access to the Confidential Information to perform under this Agreement and who are bound by written agreement not to disclose third-party confidential or proprietary information disclosed to Evaluator, or as such disclosure may be required by law or governmental regulation. You agree to take adequate steps to protect all Confidential Information from unauthorized disclosure or use, including to Your contractors who are not obligated by their agreements with You to protect the confidential information and/or intellectual property rights of third parties. You further agree that any contractor or representative with access to the Confidential Information shall sign a non-disclosure agreement that protects the confidentiality of and intellectual property rights of Google and its licensors in the Appliance. Nothing in this Agreement shall prohibit or limit either party's use of information (a) previously known to it without obligation of confidence, (b) independently developed by or for it without use of or access to the other party's Confidential Information, (c) acquired by it from a third party which is not under an obligation of confidence with respect to such information, or (d) which is or becomes publicly available through no breach of this Agreement. Results, analyses or other information generated in benchmarking and/or performance testing pursuant to the Beta Program shall be Confidential Information and shall, at the request of Google, be provided to Google. Neither party shall use the name of the other party in any news release, public announcement, advertisement, or other form of publicity without securing the prior written consent of the other. Neither party shall disclose any of the terms of this Agreement to any third party without the prior written consent of the other, except to the party's auditors or attorneys, or under subpoena duly issued by a court of competent jurisdiction, or as otherwise required by law or governmental regulation. Each party acknowledges that damages for improper disclosure of Confidential Information may be irreparable; therefore, the injured party is entitled to seek equitable relief, including temporary restraining order(s) or preliminary or permanent injunction, in addition to all other remedies, for any violation or threatened violation of this Section or Section 5.

**5. OWNERSHIP; RESTRICTED USE.** All ownership rights, title, and Intellectual Property Rights in and to the Appliance shall remain in Google and/or its licensors. "Intellectual Property Rights" means any and all rights existing from time to time under patent law, copyright law, semiconductor chip protection law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law, and any and all other proprietary rights, and any and all applications, renewals, extensions and restorations thereof, now or hereafter in force and effect worldwide.

THE APPLIANCE OR ANY PORTION THEREOF MAY NOT BE USED, COPIED, TRANSFERRED, OR MODIFIED EXCEPT AS EXPRESSLY PERMITTED BY THIS AGREEMENT.

**6. WARRANTY DISCLAIMER.** YOU UNDERSTAND AND AGREE THAT: (A) THE APPLIANCE IS A BETA PRODUCT STILL UNDERGOING TESTING AND DOES NOT REPRESENT A FINAL PRODUCT FROM GOOGLE, AND (B) THE APPLIANCE MAY CONTAIN BUGS, DEFECTS, ERRORS AND OTHER PROBLEMS THAT COULD CAUSE SYSTEM FAILURES. CONSEQUENTLY, THE APPLIANCE, AND ANY ACCOMPANYING DOCUMENTATION ARE PROVIDED "AS IS" AND ANY USE THEREOF SHALL BE AT YOUR OWN RISK. GOOGLE AND ITS LICENSORS MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NON-INFRINGEMENT. GOOGLE ASSUMES NO RESPONSIBILITY FOR THE PROPER INSTALLATION AND USE OF THE APPLIANCE. GOOGLE AND ITS LICENSORS MAKE NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY THE APPLIANCE. GOOGLE MAKES NO REPRESENTATION THAT GOOGLE (OR ANY THIRD PARTY) WILL ISSUE UPDATES OR ENHANCEMENTS TO THE APPLIANCE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, TO THE EXTENT PERMISSIBLE, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE TERM. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHER RIGHTS, WHICH VARY FROM JURISDICTION TO JURISDICTION.

**7. LIMITATION OF LIABILITY.** IN NO EVENT WILL GOOGLE OR ITS LICENSORS BE LIABLE FOR: (i) ANY DAMAGES WHATSOEVER, INCLUDING DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, AND INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA, LOST PROFITS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED (INCLUDING BUT NOT LIMITED TO USE, MISUSE, INABILITY TO USE, OR INTERRUPTED USE) AND UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT AND WHETHER OR NOT GOOGLE WAS OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE REGARDLESS OF WHETHER ANY REMEDY SET FORTH IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE; OR (ii) FOR ANY CLAIM ATTRIBUTABLE TO ERRORS, OMISSIONS, OR OTHER INACCURACIES IN THE EXTENDED FUNCTIONALITY OR DESTRUCTIVE PROPERTIES OF THE APPLIANCE. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY TO THE EXTENT APPLICABLE LAW PROHIBITS SUCH LIMITATION. FURTHERMORE, SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO YOU. *THE APPLIANCE IS PROVIDED WITHOUT CHARGE FOR EVALUATION AND BETA TESTING PURPOSES ONLY AND THE PARTIES AGREE THAT THE FOREGOING LIMITATIONS REPRESENT A REASONABLE ALLOCATION OF RISK UNDER THIS AGREEMENT.*

**8. MISCELLANEOUS.** This Agreement is personal to You. You may not assign Your rights or delegate Your obligations under this Agreement, without the prior written consent of Google, except to the surviving entity in a merger or consolidation in which You participate or to a purchaser of all or substantially all of Your assets, provided that You notify

Google in writing prior to such assignment, and provided that such surviving entity or purchaser shall expressly assume, in a writing promptly provided to Google, the performance of all of the terms of this Agreement. Any attempted assignment in derogation hereof shall be null and void. Upon termination, the following sections of this Agreement will survive: 2, 4, 5, 6, 7, 8, 9 and 10. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the federal U.S. laws applicable therein, excluding its choice of law provisions, and You and Google agree to submit to the personal and exclusive jurisdiction of the courts located in Santa Clara County, California. The parties specifically exclude from application to this Agreement the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. If any provision of this Agreement is found void and unenforceable, it shall be replaced to the extent possible with a provision that comes closest to the meaning of the original provision. The unenforceability of any provision, however, shall not affect the validity of the balance of the Agreement, which shall remain valid and enforceable according to its terms. THIS AGREEMENT CONSTITUTES A COMPLETE INTEGRATION OF ALL UNDERSTANDINGS BETWEEN THE PARTIES AND IS THE ENTIRE AGREEMENT BETWEEN YOU AND GOOGLE RELATING TO THE APPLIANCE AND THE BETA PROGRAM AND ALL TERMS HEREIN. THE TERMS AND CONDITIONS OF THIS AGREEMENT AND ANY SPECIFICALLY REFERENCED UNIFORM RESOURCE LOCATOR (AS SUCH URL MAY BE MODIFIED FROM TIME TO TIME, AS PROVIDED HEREIN) SHALL TAKE PRECEDENCE OVER ANY PURCHASE ORDER, ON-LINE OR CLICK-THROUGH AGREEMENTS, WEB SITE RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT OR OTHER DOCUMENT WHETHER FORMALLY REJECTED BY GOOGLE OR NOT, AND ANY CONFLICTING, INCONSISTENT, OR ADDITIONAL TERMS CONTAINED THEREIN SHALL BE NULL AND VOID.

**9. U.S. GOVERNMENT RESTRICTED RIGHTS.** The Appliance is commercial within the meaning of the applicable civilian and military Federal acquisition regulations and any supplement thereto. If the user of the Appliance is an agency, department, employee, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Appliance, including technical data or manuals, is restricted by the terms, conditions and covenants contained in this Agreement. In accordance with Federal Acquisition Regulation 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies, the use of the Appliance is further restricted by this Google commercial software license agreement.

**10. AUTHORITY AND AGREEMENT TO BE BOUND.** Evaluator represents and warrants (i) that Evaluator has the power and authority to accept and to bind Evaluator to this Agreement, (ii) that Evaluator has read and understands this Agreement, and (iii) that Evaluator hereby agrees to this Agreement.

Google Inc.

Evaluator: \_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Signature)

By: \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_